

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5266 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No
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GULAB MAMAD MAKWANA

Versus

STATE OF GUJRAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner  
Mr. Nigam Shukla, learned Asst.G.P. for the respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 06/11/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the detention order dated 2-5-96 passed by District Magistrate, Jamnagar detaining the petitioner under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 3-5-96 and since then the petitioner is under detention lodged at

Baroda Central Prison, Baroda.

2. This Special Civil Application was filed in this Court on 19-7-96 and on 22-7-96 Rule returnable on 21-8-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that 4 criminal cases under the Bombay Prohibition Act were registered against the petitioner. Besides these, the detaining authority has taken into consideration the statements made by 3 witnesses on 25-4-96. The petitioner has been found to be engaged in the business of unauthorised liquor and has been detained as a bootlegger.

4. The detention order has been challenged on more than one grounds. But the learned counsel for the petitioner has kept her arguments confined to the question that even if the allegations and materials against the petitioner are taken to be correct on its face value, it can not be said that a case of breach of public order is made out. At the most it is a case of breach of law and order.

5. For the reasons given in the judgment dated 4-10-96 in Special Civil Application No.3879/96 it is found that the allegations and materials, on the basis of which the detention order has been passed, do not constitute a case of breach of public order and it is at the most a case of breach of law and order. The detention order, therefore, can not be sustained in the eye of law.

6. Accordingly this Special Civil Application is allowed and the impugned detention order dated 2-5-96 passed by the District Magistrate, Jamnagar is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.